

**Letter of Findings: 01-20150528
Individual Income Tax
For the Year 2012**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual remained subject to Indiana's individual income tax filing requirement notwithstanding having acquired a Florida residence and conducting other activities in that state; Individual's continued ownership of an Indiana home along with his presence in this state more than 183 days during 2012 established that he had an Indiana income tax filing obligation.

ISSUES

I. Individual Income Tax - Residency.

Authority: IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayer argues he was not required to file 2012 Indiana income tax return because all of his income was properly attributed to the state of Florida.

II. Tax Administration - Penalty.

Authority: IC § 6-8.1-10-2.1(a); IC § 6-8.1-10-3.

Taxpayer states that he is entitled to an abatement of a twenty-percent penalty.

STATEMENT OF FACTS

Taxpayer formerly lived in Indiana. In 2009, he purchased a home in Florida. The Indiana Department of Revenue ("Department") sent Taxpayer a notice asking him to send a letter that explains "why you were not required to file a 2012 Indiana income tax return." Taxpayer's representative responded stating that the "[T]axpayer's residence was in Florida for the Year In Issue, and that no Indiana return was required."

In response, the Department requested two of three pieces of information. The Department asked for:

- A Florida property tax receipt or Florida Declaration of Domicile;
- A Florida driver['s] license or voter registration;
- A lease agreement and utility bills that cover the full year of 2012.

Taxpayer's representative responded with "[Taxpayer's] Florida property tax assessment for 2012 illustrating that he claimed and was entitled to the Florida homestead tax deduction; documentation from Broward County, Florida that [Taxpayer] paid the 2012 property tax assessment on November 30, 2012; and a copy of [Taxpayer's] driver's license and voter registration card."

Nonetheless, the Department subsequently issued Taxpayer a proposed assessment of Indiana income tax.

Taxpayer disagreed with the assessment of additional tax and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

Taxpayer argues that he was not a resident of Indiana during 2012 for purposes of the state's income tax. Taxpayer explains:

The Taxpayer is a resident and domiciled in Fort Lauderdale, Florida. He has been a resident of Florida and domiciled in Florida since November 2009. The change in residency was disclosed on the Taxpayer's Indiana adjusted gross income tax return for the 2009 tax year, and the return was accepted by the Indiana Department of Revenue.

Taxpayer states that he changed his permanent address to Florida evidenced by his claiming a "homestead tax deduction for his residence in Fort Lauderdale," the fact that he obtained a Florida driver's license, purchased and registered a new car in Florida, obtained car insurance from a Florida insurer, registered to vote in Florida, filed federal income tax returns listing his Florida address, and joined Florida social organizations.

Taxpayer admits that he spent time at his Indiana home during 2012. Taxpayer explains that he did so in order to receive treatment from his Indiana medical care providers. Taxpayer explains:

Based upon the location of the doctors, the Taxpayer was required to travel to and spend significant time in Indiana during the Year In Issue for these surgeries. The Taxpayer was required to spend significant time in Indiana either in the hospital related to the surgery or to visit his doctors. But for this time in Indiana for his [] operations and treatment, the Taxpayer was in Indiana less than 183 days during the Year in Issue.

All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person" IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "[o]nce a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . .

he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact . . . [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. Id. 1317 (Internal citations omitted).

The supreme court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. Id. at 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the Matter of Evrard, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. Id. Facts to be considered include:

- (1) Purchasing or renting residential property
- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile. Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

Pursuant to IC § 6-3-1-12(b), "The term 'resident' includes . . . any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" Taxpayer owns an Indiana home and had an ongoing and extended presence in this state for more than 183 days during 2012. Therefore, Taxpayer was an Indiana resident for state tax purposes during 2012.

Taxpayer has provided evidence that he acquired a home in Florida and set down roots in that state. However, Taxpayer continues to maintain an active presence in Indiana including continued ownership of his Indiana home along with his ongoing and extended presence in this state more than 183 days during 2012. According to Taxpayer, his presence in this state is not by choice but by his wish to receive medical treatment at a facility he believes most competent to provide that medical care. However, Indiana's statute is not based on whether a person is present in this state by choice or by practical - and quite reasonable - necessity. In Taxpayer's case, the rule is clear; "The term 'resident' includes . . . any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12. Taxpayer retained ownership of an Indiana home and spent more than 183 days in this state during 2012.

FINDING

Taxpayer's protest is respectfully denied.

II. Tax Administration - Penalty.

DISCUSSION

Taxpayer believes that the penalty assessed was incorrect. As Taxpayer explains that the proposed penalty assessment is "illegal and contrary to the law because he wasn't negligent, and certainly wasn't negligent within the meaning of IC § 6-8.1-10-2.1 and [45 IAC 15-11-2](#)."

The penalties to which Taxpayer refers were assessed pursuant to IC § 6-8.1-10-3 which provides as follows:

If a person fails to file a return on or before the due date, the department shall send him a notice, by United States mail, stating that he has thirty (30) days from the date the notice is mailed to file the return. If the person does not file the return within the thirty (30) day period, the department may prepare a return for him, based on the best information available to the department. The department prepared return is prima facie correct.

If the department prepares a person's return under this section, the person is subject to a penalty of twenty percent (20[percent]) of the unpaid tax. In the absence of fraud, the penalty imposed under this section is in place of and not in addition to the penalties imposed under any other section.

Unlike the underpayment, late, or "negligence" penalties set out in IC § 6-8.1-10-2.1(a), the twenty percent penalty does not contain a provision which allows for abatement of the penalty for "reasonable cause" or because there was no "willful neglect" on the part of Taxpayer.

In the case of the penalty assessed pursuant to IC § 6-8.1-10-3, the Department concludes that there is no statutory basis upon which to provide Taxpayer the relief sought.

FINDING

Taxpayer's protest is respectfully denied.

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